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THE COUNSELOR
DEPARTMENT OF STATE
WASHINGTON

July 11, 1978

TO: Members of the Micronesia Interagency Group

FROM: Matthew Nimetz *MM*
Chairman
Micronesia Interagency Group

SUBJECT: Nuclear Claims

Attached is a copy of a memorandum from Secretary of Defense Harold Brown to Dr. Brzezinski dealing with claims arising out of U.S. nuclear testing in the Marshall Islands. In response to Dr. Brzezinski's request for a recommendation from the Interagency Group, I propose to send him the attached memorandum. Please provide my office with your comments either orally or in writing by July 19. If you have any questions, contact Ira Wolf at 632-0775.

Attachment:

As Stated.

Blue Dumb

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*Mr. Giverman
action
Revised
7-19*

L. Joe Deal Personal Fils

DRAFT MEMO

MEMORANDUM FOR: DR. ZBIGNIEW BRZEZINSKI

FROM: Matthew Nimetz
Chairman
Micronesia Interagency Group

SUBJECT: Micronesia Status Negotiations

In response to your memorandum to me of July 7, I have consulted with appropriate members of the Micronesia Interagency Group on the subject of claims arising from U.S. nuclear testing and related activities in the Marshall Islands. As a result of these consultations, I am establishing a task force composed of the Departments of State, Defense, Energy, Interior and Justice and OMB, chaired by the Office of Micronesia Status Negotiations, to undertake a comprehensive study of this matter. I am asking the task force to complete this study by October 6 and to make its recommendations to the Interagency Group. At that time, I expect we will recommend to the PRC that Ambassador Rosenblatt's instructions be amended.

In the meantime, Ambassador Rosenblatt, during the August negotiating session with the Micronesians, will inform the appropriate Marshallese representatives that we have formed a task force to examine this entire subject. He will also ask the Marshallese to expand upon their previous comments on this issue. As you know, the status of the Marshall Islands within Micronesia will not be settled until the results of the July 12 referendum are known late this month. Thus, the Interagency Group believes that, at present, no amendment of Ambassador Rosenblatt's instructions is necessary.

11736

THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

3 JUL 1978

MEMORANDUM FOR THE ASSISTANT TO THE PRESIDENT FOR NATIONAL
SECURITY AFFAIRS

SUBJECT: Micronesian Status Negotiations

By letter dated March 27, 1978, Secretary Duncan made an informal request to Peter R. Rosenblatt, the President's Personal Representative for Micronesian Status Negotiations, that he include on the agenda for the negotiations potential claims arising out of United States nuclear testing and related activities. A copy of his letter is attached.

In discussions between the Department of Defense and the Office of Micronesian Status Negotiations, Ambassador Rosenblatt has expressed concern that his instructions from the National Security Council do not authorize him to raise this question in the negotiations. To remedy this concern, we believe that Ambassador Rosenblatt should be authorized to discuss the issue.

The issue is ripe for decision now because the Ambassador departs for Micronesia July 14, 1978 to present and explain the text of a draft compact preparatory to a plenary negotiating session which will commence on or about August 1, 1978. The current draft is silent on the claims question.

The negotiations presently are being conducted pursuant to PD/NSC-11, dated May 5, 1977, as amended by PD/NSC-34. I would like to see these instructions supplemented as follows:

(1) To direct the United States negotiator, prior to the next Plenary Session, to raise with all relevant parties the possibility of arranging for a final disposition as part of the status negotiations of all potential claims arising out of United States nuclear testing and related activities in Micronesia;

(2) To direct the United States negotiator to obtain from such discussions the views of such parties with respect to the parameters that any such final disposition might take; and

(3) To direct the United States negotiator to report the results of such discussions back to the NSC Policy Review Committee for further instructions on this subject.

I believe that it is in the best interest of the United States to attempt to resolve the claims issue at this time. This attempt may ultimately be unsuccessful but I think it is important that we make a good faith effort. The proposed change in the negotiating instructions only requires that the issue be discussed. We can determine at a later date what our position should be.

It is important that the change be made before Ambassador Rosenblatt leaves for Micronesia on July 14, 1978,

Harold Brown

Attachment

THE SECRETARY OF DEFENSE
WASHINGTON

MAR 27 1978

The Honorable Peter R. Rosenblatt
President's Personal Representative
for Micronesian Status Negotiations
Room 3356
Department of the Interior
Washington, D.C. 20240

Dear Mr. Ambassador:

I would like to bring to your attention an issue involving potential claims against the United States Government that I believe should be raised, and resolved, at the Micronesian Status Negotiations.

Bikini and Enewetak Atolls were used by the United States for atmospheric nuclear testing during the period 1948 to 1958. Twenty-three tests were conducted at Bikini and forty-three were conducted at Enewetak. The inhabitants of these atolls were relocated during the testing, and they were not exposed to radiation. The land itself, however, suffered physical damage from the nuclear detonations and from residual radioactive contamination. In addition, the inhabitants of two neighboring atolls, Rongelap and Utirik, were exposed accidentally to radioactive fallout following the March 1, 1954 Bravo test on Bikini Atoll.

The people of these four atolls may file claims against the United States for damage or injury arising out of the nuclear testing. In the case of Bikini and Enewetak, claims may be brought for land damage or loss. There is an additional potential for claims following resettlement of those atolls should there be future personal injury as a result of exposure to any residual radiation not removed during the cleanup operations. In the case of Rongelap and Utirik, there exists a potential for personal injury claims as a result of the accidental exposure of the people to fallout.

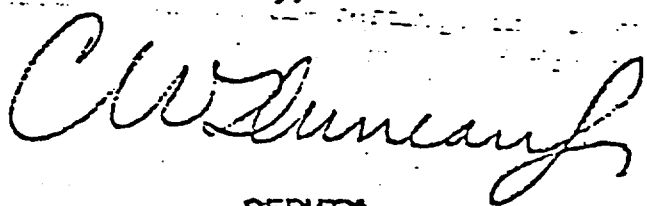
Efforts to resolve the claims issue to date, such as "ex gratia" payments and the provisions on claims in the 1977 Department of Defense Military

Construction Appropriation Act, Public Law 94-367, with respect to Enewetak, and section 104 of the Territories of the United States Appropriation Authorization Act, Public Law 95-134, may not be dispositive of the matter.

I would like to see the claims issue settled with finality now while we are in a position to do so, and I believe the Status Negotiations offer an opportunity to achieve that result. I recognize that there are a number of unsettled factual questions and that it is difficult to predict what position the Micronesians might take with respect to any proposal the United States might make in this regard. The approach I propose is to include, in the agreements terminating the Trust, provision whereby the Pacific Islands agree, in assuming title to the land, also to extinguish all such claims against the United States. The approach is not intended to put an end to medical treatment provided by the United States for personal injury as a result of radiation exposure.

It is my belief that it is in the best interest of the United States to put an end to these claims. I, therefore, request that you include the claims issue on the agenda for the Status Negotiations. This Department also will pursue, separately, with the Department of the Interior the feasibility of using individual releases in those instances where the facts permit.

Sincerely,



DEPUTY

cc: Secretary of the Interior